



Paper No. 4

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OFFICE OF PETITIONS

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In re Application of
Young et al.
Application No. 09/820,320
Filed: March 28, 2001
Attorney Docket No. 1304-1-019CIP1

DECISION GRANTING
PETITION

This is a decision on the petition, filed on August 20, 2001, in effect requesting that a Notice to File Missing Parts of Nonprovisional Application ("Notice"), mailed on June 27, 2001 for the above-identified application, be partially withdrawn to the extent that it refers to an omitted page of specification.

The petition is **DISMISSED**.

This application was filed on March 28, 2001. On June 27, 2001, the Office of Initial Patent Examination (OIPE) mailed the Notice stating that a filing date had been accorded the application, that the declaration was not signed, that the statutory basic filing fee and the extra claims fee for this application were missing, that substitute drawings in compliance with 37 CFR 1.84 with respect to margins were required, and that page 35 of the specification appeared to have been omitted from the filed application.

In response, the present petition was filed wherein Petitioners contend that page 35 of the specification was in fact filed with other application papers on March 28, 2001, as is supported by the accompanying copy of Applicants' postcard receipt for this application. This postcard indicates receipt by the PTO on March 28, 2001 of, *inter alia*, 307 pages of "application for patent." The petition also encloses a "copy" of pages 1-40 of the specification, including a page 35 allegedly filed on March 28, 2001.

A postcard receipt which itemizes and properly identifies the papers being filed would serve as *prima facie* evidence of receipt in the USPTO of **all the items listed thereon** on the date stamped thereon by the USPTO.¹ The *prima facie* showing established by a postcard receipt is, of course, rebuttable and findings of fact in each case must be based on a consideration of all of the evidence in the official file. A review of the official file for this application shows that Applicants indeed filed a total of 307 pages on March 28, 2001: pages 1-34, 36-307, and an **extra page 200** labeled as "TABLE 13 (continued)." Thus, Applicants' postcard receipt may be *prima facie* evidence of receipt by the PTO of **307 total pages, rather than 307 pages including page 35**. Accordingly, the Office concludes that page 35 was omitted from the application filed on March 28, 2001, and that an extra page 200 was inadvertently filed in its place.

¹ MPEP section 503 (Aug. 2001). See also 37 CFR 1.6 (Receipt of correspondence).

Alternatively, Petitioners argue that page 35 is entitled to the March 28, 2001 filing date because it is "merely descriptive of Figures 39-48² . . . and particularly of that which is provided in the description in Example 19 on pages 264-266 of the Specification³" and thus contains no new matter. However, the "substitute" page 35 submitted with the present petition will not be entered since it was not present in the March 28, 2001 application. Applicants may submit a replacement of the original page 35 in the form of an amendment for consideration by the examiner to determine whether it contains new matter in relation to the March 28, 2001 Specification and drawings.

In view of the above, the Notice mailed on June 27, 2001 was correct and will not be withdrawn as it pertains to omitted page 35. The petition is thus dismissed. The petition fee will not be refunded.

The application is being returned to OIPE for further processing with a filing date of March 28, 2001, using the papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



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² Petition, page 3, lines 3-5.

³ Petition, page 3, lines 9-12.